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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st August 2006

No. 7057—li/1(S)-32/2002-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th June 2006 in Industrial Dispute Case No. 60/2003 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of O.S.R.T.C. Balangir through the D.T.M. (Admn.) O.S.R.T.C. Balangir, At/P.O. Dist. Balangir and its workman Shri Jogiram Pani, Conductor At Indra Nagar, P.O./Dist. Balangir was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT,
SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 60 OF 2003

Dated the 30th June 2006

Present :

Shri P. K. Mahapatra, LL. B.
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of
O.S.R.T.C., Balangir through the
D.T.M. (Admn.) O.S.R.T.C. Balangir
At/P.O. Balangir, Dist. Balangir.

.. First Party—Management

And

Its Workman
Shri Jogiram Pani, Conductor
At Indra Nagar, P.O. Balangir, Dist. Balangir.

.. Second Party—Workman

Appearances :

For the First Party—Management	.. Shri B.K. Panda, Authorised Representative, O.S.R.T.C. Bhubaneswar
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For the Second Party—Workman	.. Self

AWARD

1. This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under Sections 10 & 12 of the Industrial Disputes Act, 1947 for adjudication of disputes vide Reference Memo No. 10388 (5)-L.E., dated the 30th October 2003 scheduled below :

“Whether the termination of service by way of compulsory retirement of Shri Jogiram Pani, Conductor O.S.R.T.C., Balangir with effect from the 9th January 2001 by the District Transport Manager (Admn.) Balangir is legal and/or justified ? If not, to what relief the workman is entitled to ?”

2. Shri Jogiram Pani, Ex-Cleaner of the Orissa State Road Transport Corporation, Balangir (here-in-after referred as ‘Workman’) has raised an Industrial Dispute against the management of Orissa State Road Transport Corporation, Balangir (here-in-after referred as ‘Management’) with the facts that without any just and reasonable ground the management had initiated a proceeding against him with the sole intention to harass him and to demoralise his trade union activities though he was discharging his duties sincerely, honestly and diligently and the harassment activity of the management was being led by the District Transport Manager, Balangir who through his henchman had conducted a slipshod enquiry and then terminated his service by way of compulsory retirement which is in violation of the O.S.R.T.C. (Classification, Recruitment and Condition of Service) Regulation (here-in -after referred as ‘Regulation’) wherein there is a clear cut mention that the compulsory retirement age of a Class-IV employees is the date on which he attains the age of 60 years, but in his case, the management side have violated it and by observing an empty formality such an extreme punishment was imposed and as such action of the management is illegal and unjustified, the same be set aside and he be reinstated in service with full back wages.

As it appears, after the punishment was awarded by the Disciplinary Authority the workman had approached the District Labour Officer, Balangir and being armed with the complaint petition, a conciliation proceeding was drawn and after deliberation, the District Labour Officer arrived at a conclusion that the dispute cannot be settled amicably and accordingly a failure report was presented to the Government. Then the Government of Orissa (Labour & Employment Department) on a consideration of the report of the Conciliation Officer arrived at a conclusion that an Industrial Dispute exists between the parties and in exercise of powers confer in the Statute, the matter was referred to this Court for adjudication. The schedule of reference runs as follows :—

“Whether the termination of service by way of compulsory retirement of Shri Jogiram Pani, Conductor O.S.R.T.C., Balangir with effect from the 9th January 2001 by the District Transport Manager (Admn.) Balangir is legal and/or justified ? If not, to what relief the workman is entitled to ?”

3. The management side have taken the plea that they have initiated a proceeding by taking note of the omissions and commissions committed by the workman and in the domestic enquiry, the principles of natural justice was duly observed and as the workman was in the habit of not attending duty and was simply signing the attendance register by use of force, so the disciplinary authority after taking note of the report of the enquiry officer took the extreme step. In the body of written statement, the management side have also stated about the past misconduct of the workman and the negligent activities committed by him during the service period. It is specifically stated in the written statement that the workman was punished seven times in the past and there was no good ground available before the disciplinary authority to take a lenient view. To sum up, it is the case of the management that the workman was retired compulsorily by way of punishment in connection with the departmental proceeding and it has no relation to Regulation No. 118 of the Regulation. In the body of the counter, the management side have clearly stated that the compulsory retirement is a punishment imposed on the workman and by taking note of the background of the case, the reference be answered in favour of the management.

4. By taking note of the pleadings of the parties the following issues are settled in this case.

ISSUES

- (i) “Whether the domestic enquiry conducted by the management of O.S.R.T.C., Balangir was fair and proper ?”
- (ii) Whether the termination of service by way of compulsory retirement of Shir Jogiram Pani, Conductor, O.S.R.T.C., Balangir with effect from the 9th January 2001 by the District Transport Manager (Admn.), Balangir is legal and justified ?
- (iii) To what relief, the workman is entitled to ?”

FINDINGS

5. *Issue No. (i)*—At the outset, the issue No. (i) was taken up as a preliminary issue and with the consent of the parties, the same was heard at length and was decided first vide order dated the 22nd March 2006. In the order dated the 22nd March 2006, this Court has arrived at a conclusion that the domestic enquiry was conducted in a fair and proper manner and the workman did not participate in it intentionally. In view of the above order it is now to be decided as to whether the termination of service by way of compulsory retirement of the workman with effect from the 9th January 2001 by the District Transport Manager (Admn.), Balangir is legal and justified or not. To avoid repetition there is no need of mentioning the facts and circumstance under which issue No. I was answered in support of the management

and against the workman and my order dated the 22nd March 2006 pertaining to the above issue may be treated as a part and parcel of this judgement.

6. Issue No. (ii) and (iii)—These issues are taken up together as those are interlinked. At the cost of repetition, I would like to mention that this Court has already arrived at a conclusion that the domestic enquiry was conducted by the management in accordance with the principles on natural justice. Once a domestic enquiry was found to be legal and valid, it is now to be considered by this Court as to whether the punishment awarded by the disciplinary authority is proper or not. It is no doubt true that after introduction of Section 11A in the Industrial Disputes Act, certain amount of discretion is vested with the Labour Court in interfering with the quantum of punishment awarded by the management where the concerned workman is found guilty of misconduct. The said discretion has been very well defined by various judgements of the Apex Court and other Hon'ble High Courts. So it is well settled law that in a given circumstance a Labour Court acting under Section 11 of the Industrial Disputes Act has the jurisdiction in interfering with the punishment awarded in the domestic enquiry for good and valid reason. It is also well established principles of law that if the Labour Court decides to interfere with such punishment, it should bear in mind the principles of proportionality between the gravity of the offence and the stringency of punishment.

As it appears both the parties have adduced documentary evidence as well as oral evidence to substantiate their plea. The workman has adduced his evidence in relation to issue No. (i) and after disposal of the same, he was again given opportunity to adduce evidence in relation to the other issues. Similarly the management side have examined Dukhidhan Suna, a retired Head Clerk of their organisation as the sole witness in relation to issue No. (i) and after disposal of the same they have examined Braja Kishore Panda, Junior Clerk to substantiate their subsequent actions. The major part of the oral evidence of the workman relates to the perfunctory domestic enquiry conducted by the management. But I have already arrived at a conclusion that it was fair and proper. So, there is no reason to give importance to the oral evidence of the workman relating to the above aspect. In his cross-examination, he has admitted that he had not joined the line duty even after the order of the D.T.M. under whom he was by then serving and in spite of receiving the recall notice, he had not joined in the duty on the stipulated date. He has also admitted that even after receiving notice of the enquiry Officer, he had not attended the proceeding. From the evidence of the Junior Clerk it is forthcoming that the workman was not attending his duty and was forcibly putting his signatures in the body of the Attendance Register. He has also stated that due to the unauthorised absence of the workman, the departmental proceeding was initiated against him. In his cross-examination, he has also stated about the report presented by the Grage-in-charge and the subsequent report presented by the A.S.M. (Garage). It is also forthcoming from the evidence of the Junior Clerk of the management that the workman had disobeyed the order of the D.T.M., Further according to him, the workman remained on leave when he was directed to perform line duty. So by taking note of the above referred lapses committed by the workman, I am of opinion that he was not having interest to work for the benefit of the company and his intention was to simply take the salary without any work. It is also forthcoming from the evidence on record and the different documents placed before this court that the

workman was also not sincere in his duty and from the past record of the workman it is also forthcoming that he was in the habit of not attending duty. The service book of the workman indicates the previous punishments imposed on him and the same is also getting strength from the evidence of the Junior Clerk, on perusal of the oral and documentary evidence, I am of firm view that the actions of workman amount to breach of discipline in the organisation though discipline at the work place of the organisation is highly necessary. By looking to the past conduct of the workman and the cogent evidence available in this record, I am of opinion that the punishment awarded on the workman is not disproportionate. The plea of the workman that he was removed from service by the D.T.M., Balangir by taking note of his Trade Union activity cannot be easily swallowed as from the evidence on record the same is not at all forthcoming. It is a well settled law once the charge against the delinquent employee is established, the quantum of punishment is for the employer to decide and the court, ordinarily should not interfere unless the punishment is shockingly disproportionate to the misconduct. This aspect is lacking in this case. So there is no reason to interfere with it. As such, the above issues are also answered against the workman. Hence the following award :—

AWARD

The reference is answered against the workman and in favour of the management on contest. The action taken by the management of Orissa State Road Transport Corporation, Balangir is justified. The termination of service by way of compulsory retirement of the workman with effect from the 9th January 2001 by the District Transport Manager (Administration), Balangir is legal and justified. In view of my above conclusion, the workman is not entitled to any relief from the management.

Dictated and corrected by me

P. K. MAHAPATRA
31-5-2005
Presiding Officer,
Labour Court, Sambalpur

P. K. MAHAPATRA
31-5-2005
Presiding Officer,
Labour Court, Sambalpur

By order of the Governor
N. C. RAY
Under-Secretary to Government